

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
DOCKETS

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In the Matter of

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.  
and  
JOSEPH L. GALLOWAY

Complainants

v.

Docket OST-99-6410-12

UNITED AIR LINES, INC., AMERICAN AIRLINES, INC.,  
DELTA AIR LINES, INC., NORTHWEST AIRLINES, INC.,  
CONTINENTAL AIRLINES, INC., US AIRWAYS, INC.,  
TRANS WORLD AIRLINES, INC., AMERICA WEST  
AIRLINES, INC., ALASKA AIRLINES, INC., AMERICAN  
TRANS AIR, HORIZON AIR INDUSTRIES, INC.,  
MIDWEST EXPRESS, INC., AIR CANADA, KLM ROYAL  
DUTCH AIRLINES, INC., TACA INTERNATIONAL  
AIRLINES, INC. AND AIR FRANCE

Respondents

ANSWER OF  
CONTINENTAL AIRLINES, INC.

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December 10, 1999

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ANSWER OF  
CONTINENTAL AIRLINES, INC.

I. INTRODUCTION

The American Society of Travel Agents, Inc. ("ASTA") has asked the Department to order Continental<sup>1</sup> and other airlines "to cease and desist immediately" the continued implementation of their independent business decisions

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<sup>1</sup> Common names are used for airlines.

to reduce the commission rates paid to travel agents. ASTA has alleged that the airlines have violated 49 U.S.C. § 41712 by reducing these commissions.

Continental urges the Department to dismiss ASTA's complaint because ASTA has failed to state any cognizable claim of unfair competition, ASTA has no standing to submit such a complaint pursuant to 49 U.S.C. § 41712 even if a cognizable claim could be stated, and the institution of any proceeding based on the allegations of ASTA's complaint would conflict with Congressional mandates and the Department's own policies which deregulate travel agency commissions and leave the determination of commissions and fares to market forces. In support of its position, Continental states as follows pursuant to Rule 204(b):

II. SINCE ASTA'S ALLEGATIONS AGAINST CONTINENTAL CONCERN "PRIVATE GRIEVANCES" AND DO NOT AFFECT A MEASURABLE "PUBLIC INTEREST," THE DEPARTMENT SHOULD DISMISS ASTA'S COMPLAINT

In its third-party complaint, ASTA demands that the Department directly regulate the commission rates paid by Continental and other airlines to travel agents to preserve artificially the particular ticket distribution system which ASTA alleges is threatened by Continental's business decisions. ASTA seeks a directive from the Department which would require Continental and other airlines to utilize a particular mode of distribution for airline tickets and to pay a supracompetitive price for that service. What ASTA really is asking, however, is for the Department to become involved in a remuneration dispute between private, contracting parties which does not concern any measurable "public interest" – an area clearly beyond Congress' mandate regarding the scope of the Department's enforcement authority.

As outlined above, § 41712 makes clear that before commencing an investigation, the Secretary must conclude that such investigation “is in the public interest.” 49 U.S.C. § 41712. No less than the Supreme Court has observed that “[§41712] is concerned not with punishment of wrongdoing or protection of injured competitors,<sup>2</sup> but rather with protection of the public interest.” Nader v. Allegheny Airlines, Inc., 426 U.S. 290, 301 (1976) (emphasis added) (quoting American Airlines, Inc. v. North American Airlines, Inc., 351 U.S. 79, 85 (1956)). In addition, the Second Circuit has held that alleged violations of private rights are the concern of neither § 41712 nor its predecessor, § 411:

[A]n administrative agency, with authority similar to that of this Board, may not employ its powers to vindicate private rights. If the Board were to assume jurisdiction over all such matters, the public-private distinction which lies at the base of its jurisdiction under §411 would be hopelessly blurred. The maintenance of such distinction requires that the Board assume jurisdiction under §411 only in those cases where the injury to the public is substantial.

REA Express, Inc. v. Civil Aeronautics Bd., 507 F.2d 42, 46 (2d Cir.1974)

(emphasis added) (internal citations omitted). Even more to the point, at least one federal district court has held that there is no significant public interest involved in a dispute between travel agents and the airlines over commission rate reductions. See In re Travel Agency Commission Antitrust Litigation, 898 F. Supp. 685, 689

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<sup>2</sup> ASTA alleges in its third-party complaint that travel agents compete with air carriers like Continental for the distribution of airline tickets. See, e.g., Complaint at 10-11. Continental disputes ASTA’s theory that travel agents and the airlines are competitors. See infra.

(D. Minn. 1995). The public interest at issue in such a dispute, according to the court, is “neutral” since:

A \$100 ticket still costs the consumer \$100. Either the carrier or the travel agent gets a bigger piece of the \$100 bill, but the consumer’s cost is the same. [It] is an “inside the circle” fight. Under these circumstances, and in the absence of a direct cost to the consumer, the public does not yet have a demonstrated interest.<sup>3</sup>

Thus, it is clear that ASTA’s request is beyond both the scope of the Department’s authority as well as its expressed desire to use its “enforcement authority and resources . . . to protect the public interest and not merely to resolve private grievances.” DOT Order 95-1-2 at 5; see also DOT Order 80-5-11 (May 1, 1980) (finding that “[w]here there has been no injury to the traveling public, we do not believe that it is in the public interest to expend our limited enforcement resources on private and isolated agent-carrier disputes which can be appropriately resolved in other forums.”).

Under the Airline Deregulation Act, the Department does not have the jurisdiction necessary to dictate the market structure that ASTA is seeking to impose upon Continental and other airlines. Continental’s independent decision to

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<sup>3</sup> Id. ASTA has complained that the commission rate reduction at issue will lead to travel agents charging consumers higher service fees to make up for their diminished revenue stream. See Complaint at 19. However, if travel agents, as ASTA has alleged, truly offer consumers cheaper fares than they would be able to get from the airlines directly, the net economic benefit of travel agent use to consumers still will outweigh any potential service fee levied by travel agents on the flying public. Thus, the commission rate reduction will not amount to any “direct cost to the consumer.”

reduce travel agent commission rates is driven by significant changes in the marketplace for the purchase of airline tickets by the flying public and its need to remain competitive with its major airline competitors in the industry. With the advent of the Internet Age, the traveling public now has access to fare and schedule information which only a few years ago was available only to travel agents and the airlines.<sup>4</sup> See, e.g., “The Second.com-ing? A Breakthrough Fare-Finder May Transform Web Travel,” The Washington Post (December 5, 1999), at E1 (describing one of the many low-cost airfare search tools available to consumers over the Internet), “Expedia to Expand Priceline Battle With Ticket Move,” Wall Street Journal, December 10, 1999 at B9 (describing expanded name-your-own price internet search competition) and “ARN Lowers Ticket Prices,” Aviation Daily, December 10, 1999 at 9 (describing reduced ticket prices offered by Airline Reservation Network). Consumers now find that they are not beholden to the travel agency industry monopoly,<sup>5</sup> and have begun to move away from reliance upon traditional travel agents for the purchase of airline tickets. Consumers increasingly are purchasing their tickets from on-line web sites or the airlines themselves.

These are the realities of a market-based economy which have led to the

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<sup>4</sup> ASTA itself has recognized that the airline industry is “in a period of unprecedented technological change.” Response of ASTA to Supplemental Comments of United Air Lines, Inc., Docket OST-97-2881-122 (Oct. 29, 1999).

<sup>5</sup> By ASTA’s own admission, “the agencies’ share of airline sales . . . [was] 81 percent in 1995.” Complaint at 10 n.7. By any measure, that is a monopoly in airline ticket sales.

commission rate reduction. Although no one disputes that travel agents perform a valuable service, competitive forces now dictate that these services are less valuable to the airlines than in previous times, and, if ASTA's arguments are at all correct, more valuable to airline passengers.

As ASTA itself has pled, during the early years of deregulation, "competitive forces led to the expected and inevitable rise in agency compensation [through the increase in travel agent commission rates paid by the airlines] to 10 percent."

Complaint at 9. Well, these competitive forces are at work again – but this time ASTA does not like the fact that market conditions now are driving commission rates for its members' services down instead of up as on ASTA's fore. a i l s to realize, however, is that a valuable service "does not mandate a particular compensation scheme, nor does it assure that the compensation will be 'fair' in the eyes of its practitioners." In re Airline Ticket Commission Antitrust Litigation, 953 F. Supp. 280, 283 (D.Minn. 1997) (emphasis added).

It is clear that the forces of competition have compelled the commission rate changes at issue, which is exactly what Congress intended when it deregulated the industry. When the Civil Aeronautics Board concluded that airline commissions paid to agents should be subject to market forces, it did so because the "Airline Deregulation Act of 1978 significantly altered the policy directives that guide the

Board's consideration" and "the public interest demand[ed] even greater reliance on the free interplay of actual and potential competitive forces."<sup>6</sup>

More recently, the Department itself concluded that, "[u]nder our enforcement policy, we do not consider incentive programs or the payment of different levels of commissions to affect competition adversely when the only effect is to divert passengers from one airline or ticket agent to another . . . the Federal Aviation Act protects competition but not individual competitors." DOT Order 92-2-46 at 5.

From the very beginning of the Civil Aeronautics Board's efforts to subject travel agent commissions to market forces, various travel agents and travel agent groups have complained that they would be driven out of business if market forces were allowed to govern the commissions paid by airlines. Although domestic commission agreements were terminated in 1995 and airlines began establishing their own commission rates, total travel agency commissions have risen steadily.

Travel agents continue to be an important part of Continental's distribution network. Like other airlines, however, Continental must struggle with the competing imperatives of increasing its sales, including travel agency sales, and reducing its distribution costs to remain competitive with other airlines. At the

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<sup>6</sup> CAB Order 79-9-65 at 3. Even before passage of the Airline Deregulation Act, the Civil Aeronautics Board opened up international commissions to competitive forces and said, "the Board is relying more and more on competition and the efficiencies of the marketplace to reach the goals outlined" in the public policy provisions of the Federal Aviation Act. CAB Order 78-8-87 at 6.

same time, Continental cannot compete effectively with other airlines if its commission costs exceed those of its competitors for the same sales.<sup>7</sup> Under these circumstances, Continental must be free of government action that would preclude it from balancing the competing demands upon it as its own management sees fit and determining the commissions it will pay Continental's travel agents. Congress recognized as much when it enacted the Airline Deregulation Act, and the Department and the Civil Aeronautics Board have concluded repeatedly that commissions should be determined by market forces, not regulation. Thus, ASTA's complaint must be dismissed.

III. ASTA CANNOT ESTABLISH A CLAIM OF UNFAIR  
COMPETITION AGAINST CONTINENTAL

A. Basic Agency Principles Undermine ASTA's Ability  
To Establish A Claim Of Unfair Competition Against  
Continental

It has been well-settled both before the Department and the courts that travel agencies are "agents" of the airlines. See, e.g., Investigation Into Competitive Marketing of Air Transportation – Agreements Phase, DOT Order 82-12-85 (Dec. 16, 1982), at 59 ("[i]n writing the ticket, the travel agent acts as that particular carrier's agent on the transaction"); Illinois Corporate Travel v. American Airlines, 889 F.2d 751, 753 (7<sup>th</sup> Cir. 1989) (finding that "[t]ravel service operators

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<sup>7</sup> Courts have recognized that reducing airline commissions reduces airline operating costs and that such cost reductions have a significant impact upon the fares airlines charge. (See Lyn-Lea Travel Corp. v. American Airlines, 1997 U.S. Dist. LEXIS 21119 (N.D. Texas), December 2, 1997).

are ‘agents’ for the purposes of antitrust law when they sell tickets for air carriers’ accounts.”)<sup>8</sup>

One of the fundamental tenets of agency law is that an agent is under a duty not to compete with its principal concerning the subject matter of the agency. See Restatement of the Law, Agency, 2d, § 393. Thus, travel agents have a legal duty not to compete with Continental in the sale of air transportation to the public.

The prevailing theme of ASTA’s third-party complaint is that Continental is in direct competition with travel agents in the sale of air transportation, and that Continental has decided to reduce travel agent commission rates to gain an upper hand in the competitive marketplace. For instance, ASTA’s third-party complaint alleges, among other things, that Continental is forcing travel agents out of business, through its reduction in travel agent commission rates, as it attempts to “secure more direct consumer business.” Complaint at 19.

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<sup>8</sup> Continental generally sells airline tickets to the flying public directly through its own ticketing and reservations system or indirectly through authorized travel agents, who sell tickets on behalf of Continental from Continental’s inventory. To sell tickets on a Continental flight to the public, a travel agent must be accredited with the Airlines Reporting Corporation (“ARC”). Once accredited by ARC, an agent may apply to Continental for authorization to sell Continental tickets, and must accept and abide by the terms and conditions of the standard ARC travel agency agreement, which provides in pertinent part that “[the] agreement establishes a principal-agent relationship” between the travel agent and the airline. ARC Carrier Services Agreement at 1. Thus, the agency relationship which exists between travel agents and Continental is a matter of contract as well as a matter of law.

However, as a matter of law, there is no “true competition between the airline and its agents,” Illinois Corporate Travel, 700 F.Supp. 1485, 1492 (N.D.III 1988), aff’d, 889 F.2d 751 (7<sup>th</sup> Cir.1989). In fact, in a case recently brought by travel agents against a number of airlines alleging unfair methods of competition, the Department dismissed the agents’ third-party complaint and accepted the airlines’ argument that:

[F]or antitrust purposes, travel agents are not the airlines’ competitors in the sale of air transportation.

ARTA v. IATA, et al., DOT Order 99-4-19 (April 29, 1999), at 6 (emphasis added).

By definition, therefore, the actions of Continental as principal in reducing the commissions paid to its agents cannot constitute an “unfair method of competition?” Since it is impossible to establish a claim of unfair competition when the parties at issue are not “competitors,” ASTA’s claims must fail as a matter of law.

B. The Department Has Determined Previously That Airlines Are Entitled To Impose Reasonable Restrictions On Their Agents’ Ticket Sales

ASTA contends in its third-party complaint that Continental has undertaken a number of “practices” intended to impair competition and adversely affect travel agents’ ability to conduct their business. These alleged “practices” run the gamut from reducing travel agent commission rates to requiring travel agents to undergo

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<sup>9</sup> Similarly, commission rate reductions are not “unfair practices” since travel agents still remain free to book travel on airlines that pay them higher commissions and to charge service fees to the customers that ASTA alleges benefit substantially from their agents’ services.

certain training to requiring some travel agencies to acquire locking safes for their ticket stock. See Complaint at 10-19. However, ASTA does not allege at any point in its third-party complaint that any of these alleged “practices” are unreasonable in nature. In fact, not once in its complaint does ASTA ever refer to any airline’s alleged behavior as unreasonable. Instead, ASTA simply alleges that the practices or requirements of which it complains should not be placed upon travel agents because they make an agent’s job more difficult and/or more expensive.

However, the Department has determined that airlines must be allowed the freedom to impose reasonable requirements for the distribution of its services upon its ticket agents. See, e.g., ARTA v. IATA, et al., DOT Order 99-4-19 (April 29, 1999), at 5 (finding that “as a general matter, [the Department has] consistently read the pro-competitive policy directives [of the Airline Deregulation Act] as allowing each airline the same freedom to choose the channels and the terms for distributing its services that firms in other unregulated industries enjoy.”). Furthermore, the Department has found that an airline, as principal in the airline-travel agent agency relationship, “is entitled to impose reasonable restrictions on its agent’s sales of [the airline’s] services.”). Pacific Travel International v. American Airlines, DOT Order 95-1-2 (January 4, 1995), at 4-5. The Department went on to dismiss the third-party complaint in Pacific Travel in part because Pacific Travel failed to show “that the restrictions complained of [were] unreasonable.” DOT Order 95-1-2 at 5.

The alleged restrictions and/or practices of which ASTA complains, even if accepted as true, by ASTA's own admission (or omission) do not on their face rise to the level of unreasonable restrictions. A reduction of travel agent commission rates, in the face of a competitive marketplace for airline tickets in which the traveling public increasingly is gathering its own information on fares and schedules via the Internet and other sources, thereby reducing the market importance of travel agents, is not unreasonable. Airlines asking travel agents to pass an examination in order to sell their products is not unreasonable. And airlines requiring travel agencies to acquire a locking safe to ensure the airlines' property (their ticket stock) from loss and/or theft, is not unreasonable. Precluding agents from using passive bookings which increase airline costs without producing airline revenue and requiring agents to comply with carrier directions on terms and conditions applicable to fares are reasonable requirements. Similarly, requiring internet agents to secure numbers which permit the tracking of sales and prevent fraud and to charge their consumers separately by means other than inclusion in prices on airline tickets are not unreasonable requirements. In short, none of the alleged practices complained of by ASTA, even if accepted as true allegations for the purposes of this answer, rise to the level of unreasonable restrictions upon travel agents. Thus, ASTA's third-party complaint must fail on its face. See DOT Order 95-1-2 at 5.

C. ASTA Has Failed To Plead Any Basis To Conclude That Continental Is Engaged In Any Unfair Or Deceptive Practices Or Any Unfair Methods Of Competition By Reducing Commissions Paid To Continental's Agents

For the reasons stated above, ASTA simply raises no competitive issues that would warrant action under 49 U.S.C. § 41712. ASTA's vague and conclusory allegations that the airlines have engaged in "unfair practices and unfair methods of competition" without ever pleading facts sufficient to support its claims simply do not suffice (see, e.g., Estate Constr. Co. v. Miller & Smith Holding Co., 14 F.3d 213, 220-21 (4<sup>th</sup> Cir.1994); Reynolds Metal Co. v. Columbia Gas Sys., 669 F. Supp. 744, 750 (E.D.Va.1987)), and ASTA's complaint must be dismissed.

IV. ASTA'S CLAIM THAT TRAVEL AGENTS WILL BE "ELIMINATED" DUE TO THE COMMISSION RATE REDUCTION IS ECONOMICALLY INVALID

ASTA has alleged that "[a]s airlines continue to reduce agency commissions, many agencies will be forced out of business." Complaint at 19. However, ASTA has offered no admissible statistical evidence that travel agencies are failing as a result of the commission rate reductions.

ASTA repeatedly claims in its third-party complaint that travel agents provide unparalleled experience and services which offer the traveling public significant cost savings on their ticket purchases. See, e.g., Complaint at 9. If this indeed is the case, then it follows that consumers will be willing to pay for this experience and cost savings, especially if travel agents make an effective effort to market their expertise to consumers. Many resourceful agents already have begun to do so with great results. See, e.g., Susan Carey, For Added Fee, Superagents

Book High-End Trips: Old-Line Travel Agents Face Squeeze, But “Consultants”

Offer More and Get More, The Wall Street Journal (Nov. 17, 1999), at B1

(discussing examples of experienced travel agents who receive fees of as much as \$350 per person per trip for their services). Clearly, such additional sources of revenue are available to travel agents if they market their services effectively to the traveling public.

Travel agents’ receipt of commissions from the airlines for their assistance to the consumer is becoming an anomaly in this economy. In other sectors, the agent’s income is derived from the customer, not the inventory supplier. One such example is the financial services sector. As at least one federal court has found, “[t]he relation of travel agent to airline is not substantially different from the relation of . . . brokerage house to investor.” Illinois Corporate Travel v. American Airlines, Inc., 806 F.2d 722, 725 (7th Cir. 1986). On Wall Street, the investor (analogous to the travel agency customer) pays a fee to the brokerage house (analogous to the travel agency) for the expertise and assistance the brokerage house provides in the investor’s purchase of stock (analogous to an airline ticket). The company (analogous to an airline) whose stock is sold to the investor in a particular transaction does not pay a fee to the brokerage house for each sale. Just as customers buying automobiles are moving to acquisitions on the internet and through paid buying services rather than through traditional automobile dealerships, airline passengers are moving to acquisitions through the internet and will pay agents as buying services to search out the fares and services which best

suit their needs. There is no economic reason why this compensation structure cannot work in the airline industry. Due to competitive forces in the industry discussed previously, the airline ticket market is beginning to resemble other markets more and more. See Wall Street Journal article, *supra*. ASTA asks the Department to require airlines to pay supracompetitive commissions to agents to preserve the effective monopoly of travel agents for airline passenger sales despite the advances in technology and changes in consumer buying preferences which characterize the current marketplace.

In sum, ASTA has failed to show that the commission rate reduction at issue will put travel agents “out of business.” In fact, with a little marketing creativity, travel agents can turn their unparalleled expertise and services into a revenue stream which could one day exceed the income currently derived from airline commissions. Thus, ASTA’s complaint should be dismissed.

V. ASTA’S CLAIM THAT CONSUMERS WILL SUFFER HIGHER COSTS DUE TO THE COMMISSION RATE REDUCTION IS UNJUSTIFIED

As stated above, ASTA has claimed that consumer costs will increase because agents will impose service charges on their customers to make up for the loss of commission revenue. If ASTA is correct that consumers are best served by independent travel agents who are situated uniquely to offer consumers significant cost savings, then travel agents should have no difficulty convincing consumers that their services are sufficiently valuable to justify the imposition of service fees. According to ASTA’s line of reasoning, despite the service fee, consumers in the end

will save money by dealing with travel agents for their airline ticket purchases.

Thus, in keeping with the Department's mandate and the policies it has developed, the marketplace<sup>10</sup> can and will determine whether travelers use agents or airlines to purchase tickets, and ASTA's complaint should be dismissed.

VI. ASTA LACKS STANDING TO BRING THIS COMPLAINT

ASTA's third-party complaint is premised upon vague and conclusory allegations that Continental, among others, has engaged in "unfair methods of competition in air transportation and the sale of air transportation, in violation of 49 USC 41712." Complaint at 3. The code section relied upon by ASTA states in pertinent part that:

On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.

49 U.S.C. § 41712 (emphasis added). However, ASTA is not an "air carrier, foreign air carrier, or ticket agent," and thus lacks standing to bring this enforcement action against Continental under this code provision. ASTA is a trade association which has travel agents as members, but is not itself a ticket agent, and has not

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<sup>10</sup> Among the three largest costs for airlines are distribution costs. See In re Travel Agency Commission Antitrust Litigation, 898 F. Supp. 685, 689 (D. Minn. 1995). Thus, Continental has sought to reduce its distribution costs as one of its cost control efforts in a very competitive marketplace. The commission rate reduction is simply a logical step in this process.

made any representations to the contrary. ASTA's attempt to circumvent the statutory standing requirement expressed in § 41712 by naming its President and CEO as a co-complainant cannot obfuscate ASTA's own admission that it is not itself a travel agent but in fact filing its third-party complaint in a "representative capacity." Complaint at 3. Since ASTA is not an "air carrier, foreign air carrier, or ticket agent" and the language of the statute clearly fails to empower representative parties such as ASTA to complain to the Department, ASTA lacks standing to bring this enforcement action against Continental.

#### VII. ADMISSIONS AND DENIALS

1. Continental lacks knowledge sufficient to admit or deny the allegations of the "Complainants" section of the Complaint.

2. Continental admits that it is a certificated United States "air carrier" as alleged in the "Respondents" section of the Complaint.

3. Continental admits that 49 U.S.C. § 41712 provides that the Secretary may investigate and decide whether an air carrier, foreign air carrier or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition" (emphasis added), but denies that the statutes and cases cited in this section of the Complaint could be interpreted to conclude that Continental's reduction of the commissions paid to travel agents is unlawful, as alleged in the remainder of the complaint.

4. Continental neither admits nor denies the statements in the "Economic Background: Travel Agents & Competition" section of the Complaint which

discusses ASTA's views on travel agency activities, but Continental denies that "travel agents serve as the only one-stop, neutral source of comprehensive information and counseling . . . about . . . fares" and that "travel agents are the only efficient, independent and comprehensive neutral sources of information for airline travel options ." Continental admits that "an apparent alternative distribution through travel agencies had emerged: the Internet" but denies that consumers are unable to secure information on low fares through internet sources.

5. Continental denies that it is "embarked on a campaign to eliminate or at the least severely impair the public's access to travel agents" as alleged in the "Non-Compensatory Commission Policies" section of the Complaint, but admits that it has from time to time reduced base commission rates paid to travel agents, based on its own independent judgment, to reduce distribution costs.

6. Continental denies that it is party to actions that are "intended to and have the effect of raising travel agent costs and impairing travel agency efficiency" which "are intended to and, if allowed to continue, will have the effect of impairing consumer access to travel agencies and travel agencies' access to consumers" as alleged in "The Cost Squeeze" section of the Complaint and denies that the imposition of travel agent training requirements, ticket security requirements, Electronic Reservations Service Provider Identification Number programs, efforts to deter travel agents from passive booking activities which increase carrier CRS costs without resulting in revenue to the carriers, refusals to include travel agent fees to their customers on tickets (which would make them appear to be carrier charges

rather than agent charges), instructions to agents on waiver of rules and conditions and use of information on sales by Continental's agents are actions intended to have any of the effects described above.<sup>11</sup>

7. Continental refutes the arguments contained in the "Discussion" and "Conclusion" sections of the Complaint and denies that consumers will lack access to the benefits of competition between airlines and to sources of comparative information because of reduced travel-agent commissions.

#### VIII. CONCLUSION

The essence of ASTA's complaint is that its travel agent members are displeased that Continental has reduced the commissions it is willing to pay for sales of air transportation and concerned that other avenues of distribution will become more attractive. As the Assistant Secretary of the Department has said in a slightly different context, "You seem to be asking us to restrict the marketing strategies chosen by airlines that may benefit the public in order to preserve the agencies' market share. We are unwilling to interfere with airline choices on distribution methods as long as the carriers neither violate antitrust law principles nor otherwise harm the public. The statute directs us to foster competition in the

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<sup>11</sup> Continental also notes that in its December 9, 1997 comments in Docket OST-97-2881, it said: "with respect to international services, the Department should follow the European Union's practice of allowing code-share partners to list international nonstop flights and connections only once by each carrier." (at p.23) and that SATO, Inc. has been sold to an independent owner and now functions as a travel agent.

airline industry, and more efficient distribution methods should promote airline competition.”<sup>12</sup>

For the reasons stated above, Continental urges the Department to dismiss ASTA’s complaint.

Respectfully submitted,

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<sup>12</sup> Letter from Charles A. Hunnicutt to Mr. Bruce Bishins, President and CEO, United States Travel Agent Registry (Sept. 27, 1996 ), at 3 (rejecting a claim that airlines were selling fares available only on the Internet unlawfully).

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on  
ASTA and counsel for all parties complained of in accordance with the Department's  
Rules of Practice.

  
\_\_\_\_\_  
Michael R. Finley

December 10, 1999

**SERVICE LIST (Dockets OST-99-6410)**

Answer of Continental

(Complaint of ASTA and Joseph L. Galloway v. United, et al.)

December 10, 1999

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